



General Assembly

Distr.: General
5 September 2018

English only

Human Rights Council

Thirty-ninth session

10-28 September 2018

Agenda item 4

Human rights situations that require the Council's attention

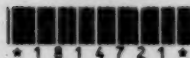
Written statement* submitted by the Himalayan Research and Cultural Foundation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

GE.18-14721(E)



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Freedom of opinion and expression in Jammu and Kashmir

It is universally recognized that freedom of opinion and expression is at the core of the philosophy of the promotion and protection of human rights. This freedom enables the human beings to form their opinions and express themselves on variety of issues concerning their lives. In a modern civilized world, democracy has been recognized as the nucleus to promote and protect the right of freedom of opinion and expression. Thus, the strengthening of a democratic order and freedom of opinion and expression supplement and compliment each other.

The challenges to the right of freedom of opinion and expression emanate from diverse sources. The new challenge which is emerging as a menacing threat to the fundamental human right to freedom of opinion and expression is being posed by the non-state actors. This challenge is particularly coming from the militant groups promoting fundamentalist religious ideologies in different parts of the world. These groups in their quest to establish theocratic religious order are opposed to democracy and secular ethos. In this quest they threaten the people and political parties and coerce them to abstain from participating in the political process. Many a political leader and political activists have been assassinated by these outfits in different parts of the world. In their reckoning, democracy and secularism are the greatest impediment in establishing a theocracy.

The state of Jammu & Kashmir in India has been witnessing this phenomenon for nearly three decades now. Many respectable and popular political leaders have been assassinated. In this mayhem a popular Kashmiri religious leader representing moderate Islam incorporating local Kashmiri traditions, Mirwaiz Maulvi Farooq was not spared and was mercilessly assassinated at his residence in Srinagar, the summer capital of J&K state. The journalists have been targeted equally. The process of silencing the journalists and muzzling the press started with the brutal killing of Lassa Kaul, Director, Kashmir Television on 19 February 1990, for daring to continue the station's telecasts despite the militant threat. His slaying led to the closure of Srinagar Doordarshan production facilities for three years. Terrorists would periodically fire rockets at radio and television stations in Srinagar. P.N.Handoo, Assistant Director and Syed Ghulam Nabi, Joint Director in State Information Department were gunned down on 1 March 1990 and 30 October 1992 respectively. In December 1993 S.P.Singh, station engineer at Srinagar Doordarshan was killed and S.P.Bajad, a Director in Radio Kashmir was severely injured in separate terror attacks.

As a result of their terror campaign against the non-Muslim minorities in Kashmir which started in late 1989, all non-Muslim media persons and reporters working for the local, national and international newspapers were forced to leave the Valley. Now the militant and separatist groups began controlling the local media by issuing threats, circulation bans and forced closures to coerce the local newspapers to publish their statements on a routine basis. On 31 March 1992 George Joseph, Srinagar correspondent of the Indian Express, who had stayed put, was ordered by the Hizb-ul-Mujahideen to leave the Valley within 48 hours. On 2 October 1990 a powerful bomb blast was made at the office of leading local Urdu daily newspaper Srinagar Times. Mohammad Shaban Wakil, Editor-in-Chief of Al Safa newspaper was shot dead by the militants on 23 April 1991 at his Srinagar office, for his muted criticism of the militant activities. Ghulam Hassan Zia, Assistant Director of Radio Kashmir was kidnapped by members of Al-Inqilab Mujahideen on 7 March 1992. He remained in their captivity till 26 May 1992. On 17 June 1993 the Jamiat-ul-Mujahideen asked for the resignation of news readers and analysts working for Radio Kashmir and Doordarshan television. Mohammad Shafi Bhat of Radio Kashmir was shot dead on 2 October 1993 by members of the Jamiat-ul-Mujahideen for not heeding their call. On 29 August 1994 Ghulam Mohammad Lone, a freelancer and his 7 year old son were shot dead in their home in Kangan by masked gunmen. Other Kashmiri journalists who were brutally killed by the terrorists include Mushtaq Ali, press photographer (on 10 September 1995), Sheikh Ghulam Rasool Azad, Editor, Saffron Times (in June 1996), Farooq Ahmed Faktoo, newscaster Doordarshan, Srinagar (on 1 June 1997), Saidan Shafi, freelance journalist (on 16 March 1997), Tariq Ahmad, private television producer (on 8 April 1997) and Shujaat Bukhari, editor-in-chief of Rising Kashmir (on 14 June 2018). The objective has been to silence the press and coerce it to follow the diktats of the militant and separatist groups and not to allow the expression of free opinion.

At the same time local press in Kashmir saw a mushrooming of new publications after 1990 including the English dailies Greater Kashmir, Rising Kashmir, Mirror, most of them projecting a local viewpoint. Militant groups would coerce the local newspapers to reproduce their statements failing which they were subjected to threats, ban orders and physical attacks. In early October 1994 the Jamiat-ul-Mujahideen sealed the offices of two leading local newspapers Al Safa and Srinagar Times, for printing announcement of electoral roll revisions in the run-up to 1995 elections. The closure which lasted for two months, was lifted on 17 December 1994 only after the two newspapers carried identical statements of 'apology' for their action. Correspondents for the local, national and international press are drawn exclusively from the local Muslim community who are under immense ideological and political pressure and threat of militant separatist groups to project their views and activities in the press.

The latest dastardly assassination of a leading Kashmiri journalist Shujat Bukhari (aged 50 years), Editor-in-Chief of one of the main local newspapers *Rising Kashmir* on 14 June 2018 in the holy month of Ramazan in broad daylight by three gunmen, has evoked strong condemnation from the civil society and politicians of different hues across the Valley and the country. Earlier in June 2006 Shujat Bukhari had survived similar attempt by the terrorists, following which he was provided with three armed security guards, all of whom were also gunned down. Shujat Bukhari was targeted because he was the popular and independent voice of Kashmir and a votary of peace process.

Shujat Bukhari was active in literary circles and was the President of Adbee Markaz Kamraz, the Valley's oldest and biggest cultural and literary body. He was at the forefront of a movement for promotion of Kashmiri language in schools. Shujat worked with UK based Conciliation Resources, an organisation working with people in conflict regions to prevent violence and build peace. He was murdered because the terrorists and their sponsors do not brook any independent voice and are working to change the societal and political composition of the Valley on Islamist fundamentalist lines. Shujaat is the most prominent Kashmiri to be assassinated in 15 years. The last targeted killing was of the pro-ceasefire Hizbul Mujahideen commander Abdul Majid Dar in March 2003, ten months after Abdul Gani Lone was shot dead, because he was advocating peace and reconciliation. Shujat's killing has sent shock waves across the Valley and is seen as a determined bid by the terrorists to silence the local, sane and independent voices of the people of Kashmir.

Another challenge which needs to be addressed is the rampant abuse of the freedom of expression and misuse of internet, social media/YouTube and broadcasting/telecasting media to spread hate, false propaganda and to mobilise people for violence and to create disorder. The local media is thriving with over 370 registered daily, bi-weekly, weekly, fortnightly, monthly and quarterly newspapers and magazines being published in English, Urdu and other languages in Jammu and Kashmir. Whereas it is the clear evidence of the freedom of expression prevalent in Jammu and Kashmir, it may be pointed out that the armed militants often threaten the journalists to publish their statements and hate speeches thereby creating a serious law and order situation besides adversely influencing the social milieu. Local daily newspapers are asked by the militant organisations to stop their publications from time to time and on a number of occasions their offices were sealed for 'not giving due coverage to their statements'. Jammu and Kashmir has a large mobile subscriber base, it being one of the highest in India. According to Telecom Regulatory Authority of India (TRAI) data the overall tele-density in the State was 108.63 %, as on 31 March 2018. Besides, over 30 private satellite TV channels, mostly from Saudi Arabia and other Islamic countries, propagate bigotry and extremist Wahabi ideology causing irreparable damage to the indigenous tolerant and composite society and culture of Kashmir. This radical televangelism focuses on promoting extremism, separatism and jihadism. It needs to be recognized that this menace poses serious challenge to the unhindered freedom of opinion and expression and peace and security in Jammu and Kashmir.



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Distr.: General
31 August 2018

English only

Human Rights Council

Thirty-ninth session

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Agenda item 3

Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development

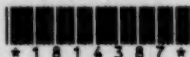
Written statement* submitted by Associazione Comunita Papa Giovanni XXIII, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

GE.18-14387(E)



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Right to development and inequalities

Associazione Comunità Papa Giovanni XXIII (APG23) welcomes the report of the Special Rapporteur on the right to development Mr. Alfaraqi on the theme of inequalities in connection with the right to development¹. We truly believe that inequality is one of the main problems that affects our societies and the perspective of sustainable development and for this reason we appreciate the efforts made by Mr. Alfaraqi to provide the opportunity to broaden to our consideration into.

Inequalities and right to development are strictly related. The consequences of inequalities threaten the enjoyment of the right to development. Recognizing that societies cannot reach full potential if all the segments of the society are excluded from participating in, contributing to and benefiting from economic, social, cultural and political development is the first step to combat inequalities². It is a known fact that inequality not only undermines development in an economic dimension, but it also threatens democratic life, social cohesion and resources redistribution.³

When we talk about inequalities in the context of development, income inequality often is one of the principal points to be discussed. Inequalities within countries keep raising and, according to World Inequality Report 2018, 'the top 1% of the richest individuals in the world earn twice as much as growth as the bottom 50% individuals since 1980'⁴ and 'the richest 1% of the world's population now control up to 40% of global assets, while the poorest half owns just 1%'⁵. The poorest 10% earns only between 2% and 7% of total global income. Economic inequality causes the perpetuation of poverty and social exclusion and, thus, creates gaps in the access to health, education, housing and other services essential to the enjoyment of economic and social rights. Extreme inequality, instead, can undermine opportunities for political participation and accountability⁶. Nevertheless, income inequality is not the only type of inequality which hinders the realization of the right to development but there are also the so-called horizontal inequalities, e.g. sex-based inequalities or race-based inequalities.

We live in a world of plenty. Yet, for hundreds of people across the world, this is also a period of deprivation. The challenge of today is both to address the deepening inequalities and persisting poverty and to ensure a life of dignity for all. Thus, fighting against inequality is probably one of the biggest challenges of our time and it needs to be addressed through the realization of the right to development and the sustainable development approach.

Reducing inequalities within and among countries is also one of the objectives of the Agenda 2030 under the Sustainable Development Goal 10. Some criticisms were made towards the indicators used to measure inequality. For example, indicator 10.1 addresses economic inequalities and poverty⁷. Nevertheless, it focuses on the bottom 40% of the population but doesn't take into consideration the gap which exists between the bottom 40% and the top 10%⁸. Moreover, these indicators, as underlined by the Special Rapporteur in his report, are not enough to assess the reduction of inequalities. In fact, these indicators 'are insufficient to track progress in eliminating discriminatory policies and practises and promoting legislations, policies and actions in this regard'⁹.

Inequality is rising both within States and internationally and the Right to Development and its implementation plays a fundamental role in addressing inequalities.

¹ UN General Assembly, *Report Special Rapporteur on the right to development*, A/HRC/39/51 (5 July 2018)

² UN General Assembly, *The road to dignity by 2030: ending poverty, transforming all lives, and protecting the planet: Synthesis report of the Secretary-General on the post-2015 sustainable development agenda*, A/69/700 (4 December 2014). Available from http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf.

³ World Bank Group, *World Development Report 2017: Governance and the Law*, pp. 10 and 32.

⁴ The World Inequality Lab (2018). *World Inequality Report 2018*

⁵ United Nations, *Transforming our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1 (21 October 2015), Goal 10

⁶ Ignacio Saiz & Kate Donald (2017) Tackling inequality through the Sustainable Development Goals: human rights in practice, *The International Journal of Human Rights*, 21:8, 1029-1049

⁷ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, Available at:

<http://www.refworld.org/docid/57b6e3e44.html>, Goal 10.1 'growth rates of household expenditure or income per capita among the bottom 40 per cent of the population and the total population'

⁸ T. Winkler & Carmel Williams (2017), *The Sustainable Development Goals and human rights: a critical early review*, *The International Journal of Human Rights*, 21:8, 1023-1028

⁹ UN General Assembly, *Report Special Rapporteur on the right to development*, A/HRC/39/51, (5 July 2018)

The Declaration on the Right to Development, in fact, places responsibilities on States and the international community in the creation of enabling conditions for a more equitable and prosperous society (art.4.1). States should adopt policies on three different levels:

1. Through global partnerships and the promotion of friendly international relations and cooperation among States¹⁰;
2. Acting individually by adopting and implementing policies that affect persons not strictly within their jurisdiction;
3. "Acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction"¹¹.

Nevertheless, participation, empowerment and accountability must also become components of the development process necessary to address inequality. As stated in articles 2.3 and 8.2 of the Declaration on the Right to Development, participatory process is of utmost importance in all development-related processes at all levels. States, on the one side, are obliged to design development policies through a process of participation and, on the other side, they 'should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights'¹². The entitlement of participation as in the Declaration wants to advance social inclusion, by promoting the central role of individuals and peoples in the decision making and in the assessment of the development policies.

We should bear in mind, nevertheless, that the Right to Development places the emphasis not only on the equality of rights but also on equity which is a concept that goes far beyond the fair redistribution of benefits – as stated in article 2.3 – but also calls for the creation of equal opportunities. The terms equality and equity are sometimes used interchangeably, which can lead to confusion because while these concepts are related, there are also important distinctions between them. The first indicates the state or quality of being equal; the second instead the quality of being fair or impartial or fairness.

In addressing inequality across the globe, not only the Right to Development recalls on the duties of States and the international community, but also the proposed right to International Solidarity can come to help, to the extent in which both rights can create "a normative bridge [which] connects the world's peoples, in that it stresses global justice and equitable international order for all"¹³.

Against this backdrop, APG23 would also like to make the following further general recommendations:

1. We invite States and international organizations to measure progress in tackling inequality accurately;
2. We recommend States to adopt national and international policies to narrow the disparities and give equal opportunities;
3. We invite States to incorporate active, free and meaningful participation, accountability and empowerment of individuals and marginalized groups in the design, implementation, monitoring and evaluation of development programmes;
4. We call all the State to endeavour their commitment to ensuring inclusive and participatory processes in order to leave no one behind and bearing in mind the Goal 10 of the 2030 Agenda to achieve equality of opportunity for more equitable development and universal access to the elements of development for all people;
5. We call on States, UN agencies and mandate holders to assess and address the impacts of policies on the achievement of SDG10.

¹⁰ Kunanayakam T. (2013) 'The Declaration on the Right to Development in the context of United Nations standard-setting, in *Realizing the Right to Development*, OHCHR, HR/PUB/12/4

¹¹ UN General Assembly, *Report of the Secretary-General and the United Nations High Commissioner for Human Rights, Right to development*, A/HRC/39/18 (10 July 2018). Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/209/84/PDF/G1820984.pdf?OpenElement>

¹² UN General Assembly, *Declaration on the Right to Development*, A/RES/41/128, (4 December 1986), article 8.2

¹³ Puvimanasinghe S. (2013) International solidarity in an interdependent world, in *Realizing the Right to Development*, OHCHR, HR/PUB/12/4 available from <https://www.ohchr.org/Documents/Issues/Solidarity/DraftDeclarationRightInternationalSolidarity.pdf>

Humanity has to face economic, climate change, energy as well as values crisis that are moving towards an even more decisive increase in inequalities both in developing and western countries.

The wisdom of the right to development together with the right to international solidarity and the functioning of the 2030 Agenda represent valid and effective instruments to achieve a more equitable development and universal access to the elements of development for all people.

Time has come to leave no one behind, and to eradicate all forms of discrimination, for a meaningful participation for all human beings to enjoy an integral development that consists in social, cultural, political and spiritual development.



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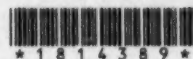
Written statement* submitted by the International Career Support Association, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[23 August 2018]

* Issued as received, in the language(s) of submission only.

GE.18-14389(E)



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Current Situation of Child Abduction in Japan

In March of this year, a five-year-old girl was murdered by her biological mother and stepfather. The real offenders of this murder are her mother and stepfather; however, the judges are as guilty as her mother and stepfather. If only they gave a ruling based on human rights consideration and granted her biological father periodical visitation rights as in Western countries, she might still be alive. However, this five-year-old girl could not see her biological father nor could she ask for help from anybody. As a result, her life ended abruptly. In this regards, it is no exaggeration to say that the judge, who did not grant visitation rights, took the little girl's life away.

Visitation after divorce between a parent, who has lost parental custody, and his or her child can be secured through the Japanese judicial system. Also, abduction of a child by a parent is prohibited by Japanese law.

Specifically, the Japanese government ratified the Convention on the Rights of the Child (CRC) in 1994. As far as the domestic law is concerned, the government reformed Article 766 of the Civil Law in 2011.

Article 9 Paragraph 1 of the CRC clearly stipulates that "States Parties shall ensure that a child shall not be separated from his or her parents against their will." Also Paragraph 3 of Article 9 stipulates, "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis."

After reform, Article 766 of the Civil Law stipulates that "visitation" has to be decided at the time of divorce based on "the best interest of the child." During consideration in the Diet in regards to reform, the Minister of Justice stated the reasons for the reform as follows: (1) In order not to foster complaints of falsified domestic violence, a protection order based on Domestic Violence (DV) Prevention Law should be carried out under appropriate procedure. (2) Abduction of a child can be considered as "child abuse" and the court order of parental custody should be ruled against the abducting parent. (3) Some consideration should be based on the "Friendly Parent Rule," where a parent, who suggests more visitation of a child to the other parent, is granted with parental custody. (4) The "Principle of Continuity" should not be considered in a case where a parent abducts a child hoping to get parental custody in favor of this principle. (5) The intention of the law is for the family courts to make every effort for a child to have direct contact with both parents as much as possible.

Obviously, the law is satisfactory. All judges have to do is to rule based on "the best interests of the child."

However, so far, judges in Japan have ignored these laws completely. Instead, they have been ruling based upon the "Principle of Continuity," which lacks any support of the law. The "Principle of Continuity" grants parental right to a parent who has the child at the time of the court ruling. The judges often give their rulings based on this principle and ignore any inconvenient facts. As such, in the Japanese judicial system, "ruling by the written law" does not exist. The following supports the above statement.

In March of this year, ambassadors from 26 European countries submitted letters of protest to the Japanese Ministry of Justice for not adhering to the CRC. However, Japanese courts, especially the Supreme Court of Japan, ignored the protests and kept following the precedent of continuity.

In regards to the point that judges do not follow Article 766 of the Civil Law, a Ministry of Internal Affairs and Communications (MIAC) bureaucrat testified at the Committee on Judicial Affairs of the Diet. According to his testimony, judges completely ignore Article 766 and adhere to the "Principle of Continuity." Even when the abandoned parent acquired parental rights based upon the "Friendly Parent Rule" in family court, it was overturned by the Japanese Supreme Court. The reason for the overturn was based upon the "Principle of Continuity."

In the case of a Ministry of Finance bureaucrat, he was granted visitation rights of "more than twice a month, or 20 days a year." He divorced through mediation, and was only granted parental authority for the son not his two daughters. Even though half of his salary went to child support, his visitation rights were later reduced to a dinner once a month for a couple of hours. After his transfer to England, the visitation was changed to "a letter every two months." After the son entered junior high school, the bureaucrat's parental authority was further reduced and even visitation at the son's school was not allowed based on his ex-wife's complaint.

Who benefits from this? None other than the "divorce lawyers." Divorce lawyers instruct wives to "abduct any children," "complain to be victims of DV," and "never let any child see the husband." Judges easily grant wives supervisory rights and child support, and lawyers get a percentage of the settlement.

Why do judges ignore child abduction and separation from a parent? One of the biggest reasons is collusion between judges and lawyers.

After retirement, the judge, who ruled to deprive parental custody from the above-mentioned bureaucrat of MIAC, acquired employment with the law firm of the ex-wife's lawyer. He is a so-called "parachutist" (the long-held practice of hiring retired high-ranking bureaucrats into top management of semi-governmental corporations or private companies). Basically, judges get guaranteed employment in return for favorable rulings for divorce lawyers. Financial benefit is more important to those judges than the best interests of children.

Such collusion came to the surface in yet another case. In this case, a judge suggested a mediation plan to a father, who was separated from his child and could not see the child, saying "if you accept this plan, you will be able to see your child." The mediation plan stipulated visitation rights of twice a month; however, it had a proviso, "in case that the child has a fever of above 37 degree or if the child does not want to see you, the visitation will be denied." The father insisted to remove the proviso, but the judge insisted that there was no problem with the proviso. As a result, when a visitation date approached, the ex-wife cancelled the visitation citing the proviso. The father has not seen his child for the past ten years.

Meanwhile, it was later revealed that upon the request of the lawyer, the judge and ex-wife secretly contacted and the judge suggested the mediation plan. When the ex-wife demanded that her ex-husband should never see her child, the judge assured her that "adding a proviso would remove any possibility for your ex-husband to see your child." Upon the judge's assurance, the ex-wife agreed on the mediation plan. In other words, the judge was well aware that the proviso would remove all possibility for the father to see his child, yet tricked the father into agreeing on the mediation plan.

Japanese judges think nothing of behaving in such an inhumane way. The above case is not an isolated incident and many Japanese judges do similar things. Surprisingly, the majority of Japanese judges do not possess a law-abiding spirit nor consciousness of human rights.

Based on the above-mentioned facts, we sincerely request the United Nations Human Rights Council to make the following recommendations to the Japanese Government.

The Japanese Government should instruct the judges to make rulings based on the related laws of human rights on the children such as Article 9 of the CRC, and Article 766 of the Civil Law. Further, those judges who make rulings against these laws should be impeached by the legislature.

The Japanese Government should prohibit judges to acquire employment at a law firm whose cases they have dealt with as a judge.

The Japanese Government should grasp the organized activity of the divorce lawyers and investigate where the money they made through unlawful business of divorce actually goes. Based on the investigation, the government should publicize the names of the lawyers, names of their law firms and the names of lawyers associations they belong to. The government should also submit formal demand for disciplinary measures against those lawyers.

The government should investigate the actual conditions of human rights violation by divorce lawyers and if necessary, those lawyers should be arrested and prosecuted.

The government should reform the Child Abuse Prevention Law and add the "child abduction and separation of a child from a parent," which violates Article 9 of the CRC, into the definition of child abuse.

The government should reform the law so that a protection order based upon the DV Prevention Law is carried out appropriately and the existence of domestic violence can be properly judged by the police and there is no room for falsified domestic violence.

Implement the Hague Convention and revise the related law to allow joint custody.